

Message Text

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ORIGIN NEA-10

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C O N F I D E N T I A L STATE 150694

FOR SCHNEIDER FROM KUX, NEA/INS

E.O. 11652: GDS

TAGS: EAID, ETRD, US, IN

SUBJECT: GOI INTEREST IN OBTAINING INFORMATION RELEVANT TO
BOEINGINVESTIGATION

REF: NEW DELHI 90068

1. ON THE BASIS OF OUR CURRENT UNDERSTANDING OF THE POWERS
OF INDIAN COMMISSIONS OF INQUIRY, DEPARTMENT OF JUSTICE
COULD NOT AGREE TO THE GOI LAW ENFORCEMENT AGENCY (HOME
MINISTRY) PROVIDING THEM WITH INFORMATION WHICH IT RECEIVES
PURSUANT TO A FORMAL JUDICIAL INFORMATION EXCHANGE AGREEMENT
WITH THE USG. THE DISTRIBUTION OF INFORMATION EXCHANGED
UNDER THESE AGREEMENTS IS LIMITED TO LAW ENFORCEMENT
AGENCIES INVESTIGATING AND PROSECUTING THE CASE FOR WHICH
THE AGREEMENT WAS CONCLUDED. AS COMMISSION OF INQUIRY CAN
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NOT PROSECUTE, IT DOES NOT APPEAR THAT JUSTICE WOULD BE
PERMITTED TO CONCLUDE AN INFORMATION EXCHANGE AGREEMENT
WITH IT. FURTHER, THE PRIMARY ELEMENTS OF SUCH AGREEMENTS
ARE CONFIDENTIALITY AND RECIPROCITY. JUSTICE ASSUMES THAT
THE HOME MINISTRY COULD NOT ASSURE THAT COMMISSIONS OF IN-
QUIRY WOULD MEET THESE REQUIREMENTS AND THEREFORE WOULD NOT
AGREE TO PASSING OF INFORMATION TO A COMMISSION OF INQUIRY.

2. VIRTUALLY IDENTICAL PROBLEMS TO THE ONE WE SEEM TO HAVE

HERE HAVE ARISEN IN NEGOTIATING OTHER INFORMATION EXCHANGE AGREEMENTS WITH FOREIGN LAW ENFORCEMENT AGENCIES. THE SNAG WITH THE INDIANS IS NOT THEREFORE UNIQUE AS JUSTICE FLEXIBILITY ON THIS QUESTION IS SEVERELY LIMITED BY U.S. LAW.

3. JUSTICE PAST EXPERIENCE INDICATES THAT THE BEST WAY OF TRYING TO RESOLVE THIS TYPE OF SNAG IS BY PERSONAL TALKS BETWEEN SENIOR LAW ENFORCEMENT OFFICIALS OF BOTH COUNTRIES IN VIEW OF THE PROBLEMS IN EACH SIDE'S UNDERSTANDING OFTEN ARCANAE POINTS OF LEGAL AND ADMINISTRATIVE PRACTICE. FOR THIS REASON, JUSTICE SUGGESTS THAT IF THE GOI WISHES TO PURSUE THE MATTER FURTHER IT SEND A SENIOR OFFICIAL OF ITS LAW ENFORCEMENT AGENCY TO WASHINGTON TO TRY TO WORK OUT A MUTUALLY SATISFACTORY AGREEMENT. SUCH A VISIT WOULD GIVE JUSTICE AN OPPORTUNITY TO EXPLAIN THE U.S. STRICTURES APPLYING TO AN INFORMATION EXCHANGE AGREEMENT, TO EXPLORE INDIAN LAW IN DEPTH AND TO SEE IF A MUTUALLY ACCEPTABLE SOLUTION CAN BE DEVISED. VANCE

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